Sitgreaves, 90 Pa. 161. See BRANDT, SURETYSHIP, 3 ed., § 163. There are, however, several well-recognized exceptions. Thus, in a proper case the Statute of Limitations may bar action against the principal, while the right to proceed against the surety remains in full force. *Villars* v. *Palmer*, 67 Ill. 204. See 15 HARV. L. REV. 497. Discharge of the principal by operation of law, incapacity of the principal, or a defense of the principal known to the surety when he made his contract, will not generally give the surety a defense. *Wolf* v. *Stix*, 99 U. S. 1; *Cochrane* v. *Cushing*, 124 Mass. 219; *Yale* v. *Wheelock*, 109 Mass. 502; *Elliott* v. *Brady*, 192 N. Y. 221; *Plummer* v. *People*, 16 Ill. 358. But *cf. Osborn* v. *Robbins*, 36 N. Y. 365. To these well-founded exceptions the New York court assumes to add the case of fraud upon the principal in the creation of the principal obligation. The surety is not permitted to set this up in total or partial defense, on the ground that a contract induced by fraud creates a valid, subsisting obligation, binding until rescinded, and subject to rescission by the principal alone. There is some authority in accord with this view. *Henry* v. *Daley*, 17 Hun (N. Y.), 210. See *Evans* v. *Keeland*, 9 Ala. 42, 43. *Cf. St. Louis Perpetual Ins. Co.* v. *Homer*, 9 Met. (Mass.) 39; *Hiner* v. *Newton*, 30 Wis. 640. The clear weight of authority, however, is *contra*. See CHILD, SURETYSHIP, § 133. Some courts give the surety a complete defense. *Bennett* v. *Carey*, 72 Iowa, 476, 34 N. W. 291; *Putnam* v. *Schuyler*, 4 Hun (N. Y.), 166. See *Whitcomb* v. *Schultz*, 223 Fed. 268, 278. Other courts apparently would permit the surety to set up the fraud merely by way of counterclaim. See *Stratman* v. *Stookey*, 3 Ill. App. 336; *Seldner* v. *Smith*, 40 Md. 602; *Jarratt* v. *Martin*, 70 N. C. 459. Where the principal has already rescinded the contract it is everywhere conceded that the surety has an absolute defense. *Hazard* v. *Irwin*, 18 Pick. (Mass.) 95; *Macey, etc. Co.* v. *Heger*, 195 Pa. 125, 45 Atl. 675. Since the surety on payment will be subrogated to a materially different right from that which he had a right to expect, it would seem that he should be given a complete defense, even where the principal has not yet repudiated the contract. *Cf. Swire* v. *Redman*, 1 Q. B. D. 536; *Railton* v. *Mathews*, 10 Clark & F. 934.

SURETYSHIP — SURETY'S DEFENSES: SURRENDER OR LOSS OF SECURITIES — LOSS THROUGH ACT OF CREDITOR AND OPERATION OF LAW. — Plaintiff, the indorsee of a promissory note, sued the maker and attached his property. The attachment was dissolved by the maker's discharge in bankruptcy, in the petition for which plaintiff had joined. Plaintiff sues the indorser. *Held*, that he is liable. *Howard National Bank* v. *Arbuckle*, 102 Atl. 476 (Vt.)

By the weight of authority and on principle, the voluntary release of an attachment lien on the debtor's property discharges the surety. *Maquoketa* v. *Willey*, 35 Iowa, 323; *Spring* v. *George*, 50 Hun (N. Y.), 227. *Contra*, *Barney* v. *Clark*, 46 N. H. 514; *Montpelier Bank* v. *Dixon*, 4 Vt. 587. See 1 BRANDT, SURETYSHIP, 3 ed., § 494. The result reached by the principal case is unquestionably correct in a jurisdiction like Vermont which takes the minority view. Its consistency with the majority rule involves more difficult considerations. A surety's liability is unaffected by bankruptcy proceedings in which the creditor assents to a resolution for accepting a composition. *Guild* v. *Butler*, 122 Mass. 498; *Ex parte Jacobs*, L. R. 10 Ch. 211. This is so even where the assent is absolutely requisite to secure the debtor his discharge. *Browne* v. *Carr*, 7 Bing. 508. Furthermore, a creditor may exercise an option under the bankruptcy law to give up his security and prove for his full claim, or he may institute the proceedings and yet hold the surety. *Rainbow* v. *Juggins*, 5 Q. B. D. 422; *Thornton* v. *Thornton*, 63 N. C. 211. That a subsidiary effect of the discharge in proceedings instituted by the creditor is the dissolution of an attachment lien should not justify application of the voluntary release rule, *supra*. Despite the nature and extent of the creditor's participation, the dis-

charge and dissolution are effected by operation of law and should afford but a personal defense to the debtor.

TAXATION — PROPERTY SUBJECT TO TAXATION — FOREIGN-OWNED CARS ENGAGED IN INTERSTATE COMMERCE. — A state tax was levied on tank cars owned by a foreign manufacturing corporation and used in the state in distribution of the corporation's products in interstate business. None of the cars were used in the state exclusively. *Held*, that the tax is valid. *Vera Chemical Co.* v. *State*, 102 Atl. 463 (N. H.).

A state tax on the privilege of operating foreign cars engaged in interstate traffic within the state is invalid as an unlawful interference with interstate commerce. *Pickard* v. *Car Co.*, 117 U. S. 34. But the fact that property is used in interstate commerce does not render it immune from its fair share of the burdens of government. *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. The tax in the present case is a tax on property, and the difficulty of an interference with interstate commerce is not presented. But a property tax can be imposed only on property having a permanent *situs* within the territory of the sovereign imposing it. *Hays* v. *Pacific Mail Steamship Co.*, 17 How. (U. S.) 596. No particular car here had a permanent *situs* in the taxing state, and if the tax was levied arbitrarily on such cars as happened to be in the state at the date of the tax levy, the case is quite unsupportable. But if the tax was levied on the average number of cars always in the state, it can be justified as a tax on a constant aggregate of shifting units. *American Refrigerator Transit Co.* v. *Hall*, 174 U. S. 70. The case is not clear on this point.

TORTS — UNUSUAL CASES OF TORT LIABILITY — ACTION FOR INDUCING BREACH OF CONTRACT TO MARRY. — The complaint alleged that the defendants induced plaintiff's fiancé to break his engagement with her by threatening to have him placed in a sanitarium and by making false statements as to plaintiff's character. The defendant demurred. *Held*, that plaintiff had no cause of action. *Homan* v. *Hall*, 165 N. W. 881 (Neb.).

The cause of action for slander was barred by the statute of limitations, which is one year for libel and slander and four for other torts. See 1909, NEB. ANN. STAT., §§ 1012, 1014, 1015. But it is a general rule that an action will lie for interference with contract rights. *Bowen* v. *Hall*, 6 Q. B. D. 333; *Morgan* v. *Andrews*, 107 Mich. 33, 64 N. W. 869. See William Schofield, "Principle of Lumley *v.* Gye," 2 HARV. L. REV. 19, 23. See also 16 HARV. L. REV. 299. Even vaguer rights, such as the right to an expectancy or to free business relations, have been protected. *Kelly* v. *Kelly*, 10 La. Ann. 622; *Lewis* v. *Bloede*, 202 Fed. 7; *Tarleton* v. *Magawley*, Peake 205. The principal case would seem to be no exception on principle, and as the allegations of the complaint negative any possible defense of privilege the decision seems difficult to support. Only one analogous case has been found. *Leonard* v. *Whetstone*, 34 Ind. App. 383, 68 N. E. 197. This is in accord with the principal case and like it is based on a statement of Judge Cooley, made in the discussion of another subject and supported by no authority. See COOLEY, TORTS, 2 ed., 277.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — EFFECT OF FRAUDULENT ADVERTISING BY PLAINTIFF ON RIGHT TO INJUNCTION. — Defendant was using the name of plaintiff's vaudeville act for her own act. Plaintiff's act claimed to be an exhibition of thought transference, but was really only a trick. In his advertising plaintiff had published a false account of his life. Plaintiff asks for an injunction. *Held*, the injunction should be refused. *Howard* v. *Lovett*, 165 N. W. 634 (Mich.).

For discussion of this case, see Notes, page 889.